

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1995-014565

11/08/2005

THE HONORABLE NORMAN J. DAVIS

CLERK OF THE COURT
S. Smith
Deputy

IN RE THE MARRIAGE OF
PATRICIA ROGERS JULBER

FILED: 11/22/2005

BRUCE D BROWN

AND

BENJAMIN DRU NEWMAN

BENJAMIN DRU NEWMAN
2721 PROVIDENCE AVE
AURORA IL 60504

EXPEDITED SERVICES-CCC

ORDER

This Court conducted an Evidentiary Hearing on a Petition for Order to Appear Re: Contempt for Non-Payment of Child Support and Non-Reimbursed Medical Expenses filed by Petitioner on May 5, 2005 as well as on a Request to Modify Child Support "Simplified Process" filed by Respondent on August 1, 2005. The Court having taken the issues under advisement and now having fully considered the testimony and evidence presented makes the following FINDINGS AND ORDERS:

PETITION FOR CONTEMPT

Child Support Arrearage

The best evidence of Respondent's arrearage in child support in this case is a payment history and arrearage calculation submitted by Expedited Services in this case. That calculation verifies that Respondent's arrearage based upon all outstanding orders and all payments made through the Support Payment Clearinghouse results in a

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principal child support arrearage of \$28, 545.55 and interest due on said arrearage of \$5,641.06 for a total arrearage of \$34,186.61 through July 31, 2005. There is competent evidence that two additional payments have been made by Respondent directly to Petitioner. The first of these direct payments was in an amount of \$816.00 paid directly to Petitioner by Respondent in August 2005. In addition, Petitioner's records indicate that a direct payment was received by her on January 7, 2003 in the amount of \$400.00 with her notation "Ben: payment on arrears per PJ letter". This payment does not appear on the Clearinghouse printout and with Petitioner's acknowledgement of this sum, the Court will credit Respondent with an additional \$400.00 payment. The Court will not reduce the interest calculation with respect to these two direct payments for two reasons. First, the interest amount incurred on these two direct payments would be relatively nominal. Secondly, Respondent is required by law and court order to make all child support payments through the Support Payment Clearinghouse, and is at risk of not receiving credit if he makes payments outside the Clearinghouse. The Court will allow the direct payments as credits on principal but will not allow further offset of interest. Accordingly,

THE COURT FINDS that Respondent is in arrears on payment of child support in the principal sum of \$27, 329.55 together with interest in the sum of \$5,641.06 for a total arrearage of \$32,970.61 through July 31, 2005.

Medical Expenses

Petitioner also seeks judgment of \$26, 501.53 of non-covered medical costs and school costs for the parties' minor child from May 1, 2001 through September 14, 2005. The most recent, with respect to uninsured medical and dental expenses for the minor child, was entered by the Honorable Bethany G. Hicks on May 22, 2000 in this case. That order states as follows:

"Petitioner/Mother shall have sole decision making authority regarding medical decisions on behalf of the minor child. Respondent/Father shall continue to provide medical and dental insurance on behalf of the minor child, and any uncovered medical and dental expenses shall be paid for according to the parties' proportionate share of income (Petitioner/Mother pays 15% and Respondent/Father pays 85%). All uncovered medical and dental expenses shall be defined as co-payments and any deductible expenses including counseling services. Any medical expenses covered by insurance may be determined by Petitioner/Mother while the child is in her care. Petitioner/Mother shall advise Respondent/Father of any

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non-emergency, serious medical decisions, and/or surgeries regarding the minor child.

Any experimental or alternate treatment or medication that is not covered by the insurance plan shall be agreed to as follows:

The parent seeking the medical treatment or medication shall send, by certified mail, a letter to the other parent detailing the treatment and estimated costs for same.

Within 25 days of receipt of said letter, the other parent shall respond to the letter, either agreeing to the treatment or disagreeing. If both parties agree to the alternative treatment or medication, Petitioner/Mother shall pay 15% of the costs, and Respondent/Father shall pay 85%, with copies of invoices of the uncovered expenses to be sent to the other party by certified mail within 7 days from the date of treatment or purchase of medication. The parent receiving the invoice shall have 30 days from receipt of same to pay their proportionate share.

If the parties do not agree to the alternative treatment or medication, the party requesting the treatment shall be responsible for the entire cost of same.

Orthodontia shall be considered a routine medical procedure under this Court's order, and any uncovered orthodontia expenses shall be paid for by the parties according to their proportionate share of income."

Despite the Court's order, Father has failed to provide medical insurance coverage for the child, and Mother has been forced to incur additional costs for the child's insurance coverage. Mother has submitted a variety of expenses under this order seeking reimbursement of 87% of various expenses incurred by her. The Court can only include such expenses in order for reimbursement if they are "medical and dental expenses" within the meaning of the Court's order.

Mother has included significant expenses for the minor child to attend the Three Rivers Montana Wilderness Program, Outward Bound Program, a boarding school consulting fee, various travel, lodging, and meal costs associated with the

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placement of the child in this program. Although it appears that medical experts have recommended placement of the child in such programs, there is no credible evidence presented that the cost of the Three Rivers Wilderness Program, Outward Bound Program, or its associated expenses of travel, lodging, and meals are themselves medical expenses. The Court's order of May 22, 2002 specifically includes "counseling services" within the meaning of uncovered medical expenses, and the Court will approve counseling expenses submitted by Mother within Father's legal obligation to contribute. Under the specific terms of the Court's prior order these expenses are not medical expenses and their inclusion in such order could only be found to obligate Father if the parties had agreed to their incurrence as a "medical treatment". There is no evidence that this occurred.

It is not unusual for a minor child to require special schools or private education. The Arizona Child Support Guidelines provide for the inclusion of educational expenses for private or special schools to meet the particular educational needs of a child but only "when such expenses are incurred by agreement of both parties or ordered by the court." (Guideline 9(B)(2)) Although Mother's desire to place the child in a special school or program that meets the needs of the minor child may be well intended and even admirable, the expenses associated therewith were not incurred by agreement of the parties or ordered by the court. Under these circumstances the Court is legally required to exclude these expenses from the reimbursement calculation. Accordingly, the Court will exclude the following claimed expenses from Mother's reimbursement claim:

DATE	AMOUNT
9/16/2002	\$ 275.91
4/21/2004	2,644.80
7/20/2005	105.43
7/21/2005	66.19
7/21/2005	15,442.50
7/23/2005	241.42
7/24/2005	17.40
8/25/2005	870.00
8/26/2005	10.07
8/27/2005	4.34
8/27/2005	21.25
8/28/2005	5.29
8/28/2005	39.15
8/28/2005	80.26
8/29/2005	57.81
8/31/2005	27.45
8/31/2005	39.76

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9/01/2005	85.65
9/02/2005	13.15
9/06/2005	348.00
TOTAL	\$ 20,395.83

Mother has also erroneously calculated Father's percentage at 87% rather than the correct percentage of 85%. Adjusting appropriate medical expenses claimed by Mother of \$4,629.70 to the correct percentage of 85% results in total medical expenses owed by Father to Mother of \$4,522.27. In addition, Father is required to pay an additional \$1,476.00 in medical insurance premiums for a total obligation of uninsured medical and dental expenses of \$5,999.27.

The parties agree that Father paid an additional \$400.00 directly to Mother in June or July of 2005 which shall be credited against Father's medical expense obligation. Crediting this sum reduces Father's obligation for uncovered medical expenses to \$5,599.27.

THE COURT FURTHER FINDS that Respondent/Father:

1. Was ordered to pay support pursuant to a valid order of support previously filed in this action;
2. Was served with the order of support or otherwise had knowledge of the order at the time it was made;
3. Is in arrears in the payment of support in the sum of **\$32,970.61** through **July 31, 2005**;
4. Is further in arrears in the payment of uncovered medical and dental expenses in the sum of **\$5,599.27** through September 14, 2005;
5. Had the ability to pay all or a substantial amount of the support and medical expenses as the same became due, but has willfully failed and refused to pay. Accordingly,

IT IS ORDERED granting judgment in favor of Petitioner, Patricia Rogers Newman nka Patricia Rogers Julber, and against Respondent, Benjamin Dru Newman, in the sum of **\$32,970.61**, together with interest thereon as provided by law for all support arrearages through **July 31, 2005**. Said judgment consolidates all previous judgments for support.

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IT IS FURTHER ORDERED granting judgment in favor of Petitioner, Patricia Rogers Newman nka Patricia Rogers Julber, and against Respondent, Benjamin Dru Newman, in the sum of **\$5,599.27**, together with interest thereon as provided by law for all uninsured medical and dental expenses through September 14, 2005.

IT IS FURTHER ORDERED that Respondent, Benjamin Dru Newman, is found in contempt of Court for failure to pay support and uninsured medical and dental expenses. As a sanction,

IT IS ORDERED that Respondent, Benjamin Dru Newman, has until **December 31, 2005**, to purge the contempt by cash payment of **\$32,970.61** to the Support Payment Clearinghouse in payment of the child support judgment and the additional cash payment of **\$5,599.27** directly to Petitioner in satisfaction of the uninsured medical and dental expenses judgment. **If Respondent fails to pay said sums by that date, he shall report to this Division by 3:00 p.m. on January 3, 2006, and pick up the necessary paperwork to self-surrender at the Maricopa County Jail.**

IT IS FURTHER ORDERED that should Respondent not pay the purge amount or self-surrender as ordered above, a Child Support Arrest Warrant shall issue for the arrest of Respondent, Benjamin Dru Newman. Upon arrest, Respondent, Benjamin Dru Newman shall be incarcerated in the Maricopa County Jail for an indefinite period of time until Respondent shall have paid the sum of **\$38,569.88** cash through the Clerk of the Superior Court or by deposit with the Sheriff, at which time he shall be conditionally released from custody. Any purge payment paid to the Clerk or the Sheriff shall be applied to the child support and/or arrearages established herein, and the Sheriff shall transmit all such sums to the Clerk as soon as possible.

IT IS FURTHER ORDERED that Respondent shall remain current in all child support obligations as previously ordered.

CHILD SUPPORT ORDER

THE COURT FINDS that the relevant financial factors required to be included, and the discretionary allowances and adjustments which the Court will allow, for a current calculation of child support pursuant to the Arizona Child Support Guidelines are as set forth in the Child Support Worksheet filed with the Court and incorporated herein by reference.

In this regard, Father has an MBA degree and was last employed in 2003 in marketing with an annual salary of approximately \$75,000.00. He expects that he will be back to work by the first of the year, but with his long period of unemployment this is not

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certain. With his level of education, prior earnings, work history, and physical and mental ability to be employed on a full-time basis, the Court attributes an annual income to Father of \$40,000.00.

THE COURT FINDS that there is a substantial and continuing change of circumstances warranting modification of the child support order in this case.

IT IS ORDERED modifying the child support order in this case. Respondent/Father shall pay to Petitioner/Mother as and for child support the sum of \$688.38 per month, payable through the Support Payment Clearinghouse on the 1st day of each month effective August 1, 2005 by wage assignment.

IT IS FURTHER ORDERED that at any time an Order of Assignment is not paying the child support obligation in full, Respondent/Father shall make full and timely payments directly to the Clearinghouse.

This Order creates an additional arrearage such that the Court will require additional monthly arrearage payments.

IT IS FURTHER ORDERED that Respondent/Father shall also pay the sum of \$50.00 per month in addition to the current child support payment toward the child support arrearage in this case until the arrearage has been paid in full.

IT IS FURTHER ORDERED that Mother shall provide medical insurance for the benefit of the parties' minor child. All medical, dental and vision expenses of the child not covered by insurance shall be paid **75% by Father** and **25% by Mother**.

IT IS FURTHER ORDERED that Petitioner/Mother shall be entitled to utilize the federal tax exemption[s] applicable to the parties' child for all federal and state income tax purposes each year hereafter.

Attorneys' Fees

Petitioner's counsel having requested attorneys' fees incurred to enforce Respondent's compliance, and good cause appearing,

IT IS ORDERED allowing counsel for Petitioner to file an appropriate Application for Attorney's Fees and Order, complete with the exception of a "blank" for the Court to insert an award of attorney's fees, together with a "China Doll" Affidavit, and submit a copy thereof to this Division on or before **November 29, 2005**. Respondent shall have until **December 13, 2005** to file any Response thereto.

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IT IS FURTHER ORDERED denying Petitioner's request for travel costs to attend court proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 58, Arizona Rules of Civil Procedure.

DONE IN OPEN COURT this date: November 18, 2005

/S/ NORMAN J. DAVIS

Hon. Judge of the Superior Court

All parties representing themselves must keep the Court updated with address changes.
A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/ssc/sschome.html>.